IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4879 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANBHAI SHANABHAI BHOI - Petitioner(s)
Versus
JASHIBEN KHODABHAI & 1 - Respondent(s)

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Appearance :
MR BJ JADEJA for Petitioner(s) : 1,
None for Respondent(s) : 1,
MR NALIN K THAKKER for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
MR PRADIP D.BHATE AGP. for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 10/04/2006

ORAL JUDGMENT

1 This petition challenges order dated 31/3/1997 made by the State Government through Deputy Secretary (Appeals), Revenue Department

in Revision Application No. SRD/Kheda/HKP/45/93 confirming the order dated 22/2/1993 made by Collector, Kheda in RTS Appeal No. 22 of 1992.

2 It is an accepted position between the parties that the historical facts stated in cognate petition being Special Civil Application No.4875 of 1997 remained the same between the parties. However, the dispute relates to land bearing Survey No.167. On death of Khodabhai Popatbhai vide Entry No.1435 dated 9.11.1990, the names of the heirs were entered and the said entry came to be certified on 27.12.1990. Thereupon, the petitioners moved the Deputy Collector by way of appeal being RTS No.41/91 on 9.7.1991. Vide order dated 30.11.1991 the Deputy Collector allowed the appeal and directed deletion of Entry No.1435. It was held by the authority that deceased Khodabhai Popatbhai had got his name entered in land bearing Survey Nos. 162 & 170 vide Entry No.1301 dated 26.4.1988 on abolition of the talukdari, and therefore, in case Khodabhai Popatbhai had purchased the land bearing Survey No.167 at the point of time of abolition of talukdari by paying the occupancy price he would have also had the said survey number entered when the other survey numbers, for which he had paid occupancy price, had been entered in the record of rights. Being aggrieved the respondents went in Appeal before Collector, Kheda which

came to be registered as RTS/BARE/22/92. The Collector accepted the Revision Application and quashed the order made by Deputy Collector in light of Entry No.97 dated 30.12.1953 whereby the names of Khodabhai Popatbhai and Shanabhai Govindbhai had been entered, which claim had continued till point of time Khodabhai Popatbhai expired. The Collector also relied on the fact that order dated 16.8.1977 made by Mamlatdar & ALT in Tenancy Case Nos. 68/76, 69/76, 83/76 and 84/76 could not be relied upon. He, therefore, vide order dated 22.2.1993 directed to approve Entry No.1435. This order has been confirmed by the Revisional Authority vide order dated 28.2.1997 in Revision Application No.SRD/Kheda-HKM- 45/93.

3 Both the learned Advocates appearing for the petitioners and the respondents have respectively advanced the same contentions which were advanced between the same parties in Special Civil Application No.4875 of 1997.

4 Over and above the reasons stated in order of even date in Special Civil Application No.4875 of 1997, it is necessary to note that neither the Collector nor the Revisional Authority have even dealt with the reasonings advanced by Deputy Collector while passing the order on

30.11.1991. In case, Khodabhai Popatbhai had purchased the land at the point of time of abolition of talukdari, he would have definitely got survey No.167 entered in his name in the record of rights when he obtained such an entry entered in relation to other parcels of land bearing Survey Nos.162 & 170. Therefore, the orders of the Revisional Authority and the Collector cannot be sustained and are hereby quashed and set aside.

5 The petition is accordingly allowed. Rule is made absolute. There shall be no order as to costs.

Sd/-
(D.A.MEHTA, J)

m.m.bhatt